

Before the  
Federal Communications Commission  
Washington, D.C. 20554

CC Docket No. 94-93

In the Matter of

Amendment of Subpart E of Chapter 1  
of the Commission's Rules Governing  
Procedures to Be Followed When  
Informal Complaints Are Filed Against  
Common Carriers

### NOTICE OF PROPOSED RULEMAKING

Adopted: August 11, 1994; Released: September 2, 1994

Comment Date: October 24, 1994

Reply Comment Date: November 8, 1994

By the Commission:

### INTRODUCTION

1. This Notice of Proposed Rulemaking solicits comments on proposed changes to the procedures that govern informal complaints filed against common carriers pursuant to Section 208 of the Communications Act of 1934, as amended,<sup>1</sup> ("Act") and Sections 1.716-1.718 of the Commission's rules.<sup>2</sup> Our goal in initiating this proceeding is to make the informal complaint process more accessible and responsive to the public by clarifying and streamlining our rules. We propose to modify certain filing and notice requirements in order to meet our commitment to the prompt resolution of informal complaints. These modifications are intended to help the general public in preparing written informal complaints, improve the procedure by which informal complaints are handled by the staff, harness staff resources to resolve informal complaints more efficiently, and eliminate unnecessary filings of formal complaints prior to the disposition of informal complaints.

### BACKGROUND

2. Section 208 of the Act permits any party to file a complaint against a common carrier for acts or omissions that violate either the Act or a Commission rule or order. 47 U.S.C. § 208. We last revised our rules governing informal complaints in 1986.<sup>3</sup> See *Amendment of Subpart E of*

*Chapter 1*, 104 FCC 2d 12 (1986) (1986 Rules Revision). These revisions were designed to achieve more efficient and expeditious processing of informal complaints by eliminating duplicate filing requirements, streamlining certain notice requirements, describing the specific remedies available to complainants and clarifying form and content requirements of complaints.<sup>4</sup>

3. After nearly eight years of experience under the current rules, we have observed several trends that we believe warrant certain modifications of these rules. Since the 1986 revisions, both the number and complexity of informal complaints against common carriers have steadily increased. We have found that in many cases, complainants fail to include in their initial submission important factual information that would help the staff to assess the complaints more quickly and direct them to the appropriate carrier or carriers for resolution.<sup>5</sup> Incomplete filings delay the processing of complaints while the staff obtains missing information and, consequently, also delay satisfaction or resolution of the complaints. In addition, we have found that complainants in some cases have filed formal complaints pursuant to Sections 1.721-1.735 of the rules<sup>6</sup> prior to final processing or disposition of their informal complaints by the staff. It appears that parties file such complaints because a literal reading of the current rule requires such a filing to continue prosecution of the complaint. These filings impose unnecessary burdens on complainants, carriers and the staff. Therefore, in light of these and other drawbacks, we propose to revise the informal complaint rules to create a more efficient process. We believe that the proposed changes will benefit the public, carriers, and the Commission. We invite interested persons to comment on our proposals and to identify any other revisions that may facilitate the filing and processing of informal complaints. The full text of the proposed rules is set forth in the attached appendix.

### DISCUSSION

#### Section 1.716 Form

4. Under Section 1.716 of the Commission's Rules, all informal complaints must be in writing and "contain a complete statement of facts tending to show that [a] carrier did or omitted to do anything in contravention of the Communications Act...." We propose to amend this section to clarify that informal complaints may be filed against common carriers for violations of the Commission's rules or orders as well as the Act. The amended provision conforms the text of this rule to the intent of Section 208 of the Act.<sup>7</sup> We further propose to revise this section to require specifically that informal complaints include factual allegations that, if assumed to be true, would support a finding that the subject carrier has violated a provision of the Act or Commission rules or orders. Under our current rules, some informal complainants fail to allege facts that,

<sup>1</sup> 47 U.S.C. § 208.

<sup>2</sup> 47 C.F.R. §§ 1.716-1.718.

<sup>3</sup> We recently amended our rules regarding formal complaints. See *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, 8 FCC Rcd 2614 (1993).

<sup>4</sup> 1986 Rules Revision, 104 FCC 2d at 12-13.

<sup>5</sup> In some cases, complainants challenging a charge or rate for

telephone service do not file with their complaint copies of the bill or other pertinent information that the staff needs to resolve the complaint.

<sup>6</sup> 47 C.F.R. §§ 1.721-1.735. Pursuant to Section 1.718, an informal complainant has the right to file a formal complaint based on an unsatisfied informal complaint.

<sup>7</sup> See 47 U.S.C. §§ 208(a) and (b).

even if true, would sustain a finding that the subject carrier has violated the Act or Commission rules or orders. The proposed provision should provide helpful guidance to the general public in preparing written informal complaints. More detailed complaints will enable FCC staff to assess the merits of complaints more quickly, thereby facilitating full satisfaction or resolution within the shortest possible time-frame. The proposed change should provide our staff with the necessary information about the informal complaints at the time they are filed and reduce the need for the staff to contact complainants to obtain additional information. Thus, the record should be developed sooner under our proposed rules than under our current rules. The inclusion of more specific factual information in the initial informal complaint also should aid the carriers in their efforts to answer or satisfy informal complaints.

5. In addition, we propose to amend Section 1.716 to add a new subsection (b). The proposed revision would explicitly encourage complainants to file both an original informal complaint as well as one copy for each carrier named in their informal complaints. We especially encourage commercial complainants that have access to copying machines to file copies of these documents. In FYs 1992 and 1993, the staff served approximately 13,000 informal complaints on common carriers. Many of these were directed against multiple carriers, but were filed without copies to serve on all of the carriers named in the complaint. These filing practices require substantial staff resources to copy complaints so that each carrier named in the informal complaints can be served. Therefore, we propose to encourage complainants to file an original plus one copy of the complaint for each carrier named in their informal complaint. We believe that multiple copies of informal complaints will greatly reduce the clerical burden in preparing complaints for processing and will result in speedier processing of informal complaints.

6. Complaints involving billing disputes are often filed without copies of relevant billing statements. As a result, the staff in these cases must contact the complainants by telephone or letter to obtain pertinent billing information. This can be a time-consuming process, which delays the complainant's resolution. Therefore, we propose to revise Section 1.716 by adding subsection (c), which would explicitly encourage complainants to file a copy of the pertinent bill(s) when the complaint involves a billing dispute. We believe that the proposed rule will enable the Commission to reassign substantial resources from administrative functions, i.e. copying and collating copies, to direct enforcement functions such as analyzing and resolving informal complaints. This reassignment of resources should accelerate disposition of informal complaints to the benefit of complainants.

#### **Section 1.717 Procedure**

7. Section 1.717 currently states that the Commission will forward informal complaints to the appropriate carrier for investigation. In actual practice, however, the Commission conducts the investigation of informal complaints. We propose to revise Section 1.716 to state that the function of carriers in informal complaint proceedings is to satisfy or answer the written allegations.

8. In addition, we propose to revise Section 1.717 further, by eliminating the Commission's discretion to close certain informal complaints without further contact with the carrier and the complainant. The staff routinely provides notice to both complainants and carriers when it

disposes of a complaint. The proposed change would conform the rule to our existing practice by requiring the staff to advise the complainant and the carrier in writing of the disposition of an informal complaint in every case.

#### **Section 1.718 Unsatisfied Informal Complaints; Formal Complaints Relating Back to the Filing Dates of Informal Complaints**

9. Section 1.718 currently states that a complainant that is not satisfied with a carrier's resolution of an informal complaint must file a formal complaint within six months of the carrier's report in order to continue prosecution of the complaint and to continue to use the filing date of the informal complaint for statute of limitation purposes. Section 1.718 was intended to prevent expiration of the two-year limitation period on claims for damages during the pendency of the informal complaint process. As currently drafted, Section 1.718 literally read, states that informal complaints are deemed to be abandoned, or a complainant's right to file a formal complaint can be extinguished, if the formal complaint is not filed within six months after the carrier has filed its report in the informal complaint proceeding. In many instances, this has required the filing of formal complaints even if the staff's investigation of the informal complaint is still in progress. In addition, Section 1.718 currently places on complainants the burden of calculating the deadline for filing a formal complaint based on an unsatisfied informal complaint. Complainants may be unaware of the six month deadline and, in any event, they must still monitor the complaint proceeding for the carrier's report to determine the formal complaint deadline.

10. In order to eliminate uncertainty and unnecessary filings, we are proposing to revise Section 1.718 to state that, in all cases involving an unsatisfied informal complaint, the period of time allowed for filing a formal complaint that will relate back to the filing date of the informal complaint is sixty days after the staff has informed the parties in writing of its disposition of the informal complaint. Consumers should benefit from the proposed rule change because it provides certainty and clarity to our rule regarding the period of time allowed for filing a formal complaint based on an unsatisfied informal complaint. For example, they no longer need to calculate the limitations period for filing a formal complaint based on an unsatisfied informal complaint. Carriers also benefit from the certainty and clarity of our proposed rule because they will be relieved of the burden of determining when they are no longer required to retain informal complaint files. In practical effect, our proposed amendment of Section 1.718 expands the time in which to file a formal complaint based on an unsatisfied informal complaint in complex informal complaint proceedings because the deadline for filing such complaints occurs later in time under our proposed rules than under our current rules.

### **PROCEDURAL MATTERS**

#### **Ex Parte Rules - Non-restricted Proceeding**

11. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See *Generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

**Regulatory Flexibility Act**

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Although the proposed rules change the timing and mechanics of the informal complaint process, they would not alter the level of evidentiary and legal support required of parties to such actions. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601 *et seq.*

**Paperwork Reduction**


13. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, the Downtown Copy Center, 1142-21st Street, N.W., Washington, D.C. 20036, (202) 452-1422, and in Room 246 at 1919 M Street, N.W. Washington, D.C. 20554. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain, Office of Management and Budget, NOB, Room 10214, Washington, D.C. 20503, (202) 395-3561. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, D.C. 20554. For further information contact William Cline at (202) 418-0210.

**CONCLUSION**

14. Accordingly, pursuant to Sections 1, 4(i), 201(b), 208 and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 201(b), 208 and 403, a NOTICE OF PROPOSED RULEMAKING IS ISSUED, proposing amendment of 47 C.F.R. § 1.716 *et seq.* as set forth in the Appendix.

15. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, all interested parties may file comments on the matters discussed in this Notice and on the proposed rules contained in the Appendix by **October 24, 1994**. Reply comments are due by **November 8, 1994**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (203) of the Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554.

## FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

**APPENDIX****PROPOSED RULES**

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. § 1.716 is proposed to be revised to read as follows:

**§ 1.716 Form**

(a) An informal complaint shall be in writing and should contain: (1) the name, address, daytime telephone number of the complainant, and the telephone number that is the subject of the complaint; (2) the name of the carrier against which the complaint is made; (3) factual allegations that, if true, are sufficient to constitute a violation of the Communications Act or Commission rules or orders by the carrier complained of; and (4) the specific relief or satisfaction sought.

(b) In addition to the original informal complaint, complainants are encouraged to file one additional copy of that complaint for each carrier named in the complaint.

(c) When a complainant is disputing a bill, the complainant is encouraged to file a copy of the bill.

3. § 1.717 is proposed to be revised to read as follows:

**§ 1.717 Procedure**

The Commission will send each informal complaint to each carrier named in the complaint for it to satisfy or answer the complaint. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. In all cases, the Commission will contact the complainant and the carrier(s) regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier's response and the Commission's disposition, it may file a formal complaint in accordance with §§ 1.718 and 1.721 of this part.

4. § 1.718 is proposed to be revised to read as follows:

**§ 1.718 Unsatisfied informal complaints, formal complaints relating back to the filing dates of informal complaints**

When an informal complaint has not been satisfied pursuant to § 1.717, the complainant may file a formal complaint with this Commission. Such claim will be deemed to relate back to the filing date of the informal complaint; Provided, that the formal complaint: (a) is filed within sixty (60) days after the date the Commission's written notification to the complainant of the Commission's review and disposition of the informal complaint is mailed; (b) makes reference to the date of the filing of the informal complaint; and (c) is based on the same cause of action as the informal complaint. The complainant will be deemed to have abandoned the unsatisfied informal complaint if no formal complaint has been filed within the sixty (60) day period.